

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA)
5)
6 VS) No. 3:14-cr-00082-1
7 R.C. PATEL)
8

9 BEFORE THE HONORABLE ALETA A. TRAUGER, DISTRICT JUDGE
10 TRANSCRIPT OF PROCEEDINGS

11 March 18, 2016

12 APPEARANCES:

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2 The above-styled cause came to be heard
3 on March 18, 2016, before the Hon. Aleta A. Trauger,
4 District Judge, when the following proceedings were
5 had at 3:00 p.m. to-wit:

6

7 THE COURT: Good afternoon. We're here
8 on sentencing in United States versus RC Patel. We
9 have William Abely for the government. For the
10 defendant we have Hal Hardin and Edward Garland from
11 Atlanta. Hello. And Donald Samuel from Atlanta.

12

 MR. SAMUEL: Good afternoon.

13

 THE COURT: Good afternoon. It looks as
14 though there are no issues with the guidelines or
15 objections to the presentence report; is that right?

16

 MR. GARLAND: Correct.

17

 THE COURT: Who's going to speak for the
18 defense?

19

 MR. GARLAND: Mr. Samuel.

20

 MR. SAMUEL: I'm going to start,
21 Your Honor.

22

 THE COURT: Is that right, Mr. Samuel?

23

 MR. SAMUEL: I will start, Your Honor.
24 Yes.

25

 THE COURT: Okay. So I'm going to accept

1 the presentence report as my findings of fact on all
2 issues and on the application of the guidelines. The
3 offense level is a 16. The criminal history category
4 is I. The resulting guideline range is 27 to -- 21 to
5 27 months, sorry about that, with one to three years
6 of supervised release.

7 Mr. Patel pled guilty under the previous
8 judge assigned to this case, Judge Haynes, back in
9 July under a plea agreement that allowed him to plead
10 to two counts of wire fraud and called for the
11 dismissal by the government at sentencing of three
12 more counts of wire fraud, a count of mail fraud and
13 four counts of money laundering.

14 Is that right, Mr. Abely?

15 MR. ABELY: That is correct, Your Honor.

16 THE COURT: All right. Are there any
17 witnesses? The defense has submitted a lengthy
18 sentencing memorandum, including videos. I've read
19 all of it and watched the videos. The government has
20 responded at length to the lengthy submittal by the
21 defense.

22 Are there any witnesses from the
23 government?

24 MR. ABELY: We do not have any witnesses.

25 THE COURT: Do you have any witnesses,

1 any victims here to testify?

2 MR. ABELY: My understanding is there are
3 no victims here to testify. I was under the
4 understanding that the victim, Mr. Kisan, would be
5 here; although, I'm not certain that he is.

6 THE COURT: Okay. I've read the victim
7 statements.

8 Does the defense have any witnesses,
9 Mr. Samuel?

10 MR. SAMUEL: We do not.

11 THE COURT: Okay. Well, I'm ready to
12 hear whatever further anyone wants to say. Does the
13 government wish to go first or do you wish to go
14 second?

15 MR. ABELY: I'm happy to go first,
16 Your Honor.

17 THE COURT: All right.

18 MR. ABELY: And I'll rely primarily on my
19 written submission, my sentencing memorandum. And I
20 don't want to retread that too much, but I did just
21 want to emphasize a couple of points in this,
22 primarily, I think, relevant to Your Honor in
23 connection with the nature and seriousness of the
24 offense. You know, I understand some of the points
25 that the defense has made about this deal gone wrong.

1 And I think it's open to debate whether Mr. Patel
2 intended from the outset to permanently deprive the
3 victim of these funds.

4 I think they will make a case and I think
5 there are facts that favor their case that that's not
6 the case. That he went into this without that
7 intention to permanently convert this money, always
8 intending to either use it for the deal or return it.
9 And I understand that point that they're making.

10 Counterbalancing that, though, I would
11 just argue that this is not as simple as a deal that
12 didn't go through. What we have here is a deal that
13 was proposed to the victim, certainly without all of
14 the relevant information being disclosed. The deal
15 involved an auction on a mortgage.

16 THE COURT: That was never going to be in
17 the individual's name.

18 MR. ABELY: That's right. Mr. Patel --

19 THE COURT: It was the bank.

20 MR. ABELY: -- never put in a bid on
21 this. Mr. Patel was an executive and part owner at a
22 bank that did. But it's certainly unclear whether
23 even if the bank had won that bid, if the victim would
24 have been entitled to any interest in that mortgage,
25 any profit from that mortgage. The CEO of the bank

1 who testified indicated, no, no, if the bank had won
2 this auction, it would have been the bank's mortgage
3 and the profit that accrued from that would have gone
4 to the bank.

5 THE COURT: And I think the banker said
6 in the grand jury testimony that these were never kind
7 of joint endeavors with individuals.

8 MR. ABELY: That's right. That is what
9 he said. He was not aware of any sort of side
10 arrangements involving Mr. Patel and any outside
11 investors. His understanding was when the bank bid on
12 a property, if the bank won it, the bank used its
13 money and then had the investment as the bank's
14 investment.

15 And, you know, I acknowledge that those
16 facts are not something that the defendant pled to in
17 his plea agreement, but I do think the grand jury
18 testimony provides an adequate basis upon which the
19 Court could conclude that either that this whole
20 notion of the deal through this auction was either a
21 sham or at least that it's unclear how Mr. Patel would
22 have made good on the deal as he had proposed.

23 THE COURT: Well, at the plea hearing he
24 had to admit the intent to defraud.

25 MR. ABELY: Yes.

1 THE COURT: And as I did not take the
2 plea, I presume he admitted the intent to defraud.

3 MR. ABELY: Yes. And I think that goes
4 to -- back in the realm of the facts that are not
5 disputed. And that's that the same day he took that
6 money and used it for an unrelated purpose.

7 I think Mr. Patel would probably say --
8 or his counsel would likely argue that he did that --
9 he didn't use the victim's money as he promised, but
10 he intended to make him whole at some point in time.
11 And I think, again, given the bank's CEO's testimony,
12 the facts around that are unclear.

13 The other point I wanted to make is just
14 the defense notion that this is something that was
15 remedied, you know, right away is not quite the case.
16 The victim -- I'm sorry, the defendant, in addition to
17 misrepresenting the status of the auction to the
18 victim, that same month in December of 2008 continued
19 those misrepresentations.

20 A civil lawsuit commenced, and during a
21 sworn deposition in that, again, Mr. Patel indicated
22 that they had either won the bid or -- so things were
23 more complicated than what really happened, which is
24 either that no bid was placed or that the bid that was
25 placed was unsuccessful just sort of ending it right

1 there. So I think the misrepresentations that go
2 along with this fraud were not confined in nature to
3 just that period in December 2008.

4 Now, I will say in the defendant's favor,
5 you know, upon being confronted by the victim, the
6 defendant acknowledged that he did owe this \$500,000
7 back to the victim. Litigation did commence, which I
8 understand was somewhat contentious in nature. There
9 were attempts to resolve it that, through no fault of
10 Mr. Patel potentially, you know, they dragged on in
11 time.

12 In other words, I don't refute the
13 defense's submission that Mr. Patel wanted to make
14 restitution to this at a fairly early stage and sought
15 to do so. And ultimately he did. He did. The
16 defense characterizes that in its paper as an
17 extraordinary -- extraordinary restitution. I'm not
18 sure that's the case.

19 I'm not sure I would quite put this in
20 the same bucket as somebody entirely voluntarily
21 making restitution. Here it was in connection with a
22 settlement of a federal lawsuit. So voluntary on one
23 hand but not entirely on the other.

24 THE COURT: Was the restitution payment
25 after these charges were brought?

1 MR. ABELY: That is correct, Your Honor.

2 That is correct. Although I don't necessarily
3 attribute it one way or the other. I don't think any
4 of us could know.

5 So that's all just going into the offense
6 conduct. And I think that that is a large driving
7 factor in the appropriate sentence in this case. I do
8 want to point out the government does seek to dismiss
9 Counts Three through Ten.

10 The -- there was a separate transaction
11 alleged in some of those counts that the parties have
12 agreed the presentence report reflects is not part of
13 the relevant conduct. I think that is accurate, I
14 think that was a separate deal.

15 I think there were proof issues
16 associated with that such that it really is not part
17 of -- it was the same -- the victim was the same
18 person who was involved in that transaction, but I
19 think the appropriate way to look at the sentencing in
20 this case is to focus on that \$500,000 transaction.

21 And I think that the seriousness of this
22 offense, as well as the need for general deterrence, I
23 mention in my papers the seriousness of investor fraud
24 in general, the harm that that can bestow on
25 individuals and it does bestow on individuals is a

1 very serious thing, so I think the general deterrence
2 is a serious factor that should play into the Court's
3 consideration.

4 Now, I've also obviously read the letters
5 that were submitted on behalf of the defendant and
6 watched the videos, and I think it is fair to say that
7 Mr. Patel has made a positive impact in a lot of
8 peoples' lives, that he has made contributions to his
9 community.

10 I think that is something that is
11 obviously fair and necessary for the Court to consider
12 in imposing a sentence in this case. I will say the
13 letters submitted on behalf of Mr. Patel maybe are not
14 the whole story. There are obviously this victim and
15 others who have had disputes in their dealings with
16 Mr. Patel.

17 But I think when looking at the whole
18 picture, it's appropriate for the Court to consider
19 the contributions that he's made as reflected in these
20 letters. And that's why, Your Honor, the government
21 has proposed a sentence in the case that is slightly
22 below the guideline range.

23 The guideline range, as Your Honor noted,
24 is 21 to 27 months. The government would suggest a
25 sentence of 18 months, which is below -- not too far

1 below, but below the low end of that guideline range.
2 I think in consideration of some of the factors, the
3 contributions that Mr. Patel has made, the fact that
4 may not be an acute need for personal deterrence as to
5 him, and the fact that he doesn't have any previous
6 criminal history and that kind of thing.

7 And in addition to that, Your Honor, the
8 government's asked for a fine of \$50,000, which is
9 within the guidelines but I think right at the high
10 end of the fine guidelines.

11 And lastly, Your Honor, I would just
12 point out that within Mr. Patel's sentencing papers,
13 there are certain arguments regarding his adult son
14 who apparently has suffered from some issues in his
15 life.

16 I would submit to the Court, though, it
17 does not appear that these issues are of a
18 debilitating nature. This is an adult son who I
19 understand to have been married and employed, who
20 lives at Mr. Patel's home along with not just his wife
21 but his other adult children.

22 So I don't think this is one of the
23 instances that I know sometimes confronts the Court
24 where the notion of imprisonment of a defendant would
25 seriously jeopardize the caregiving of somebody who

1 needs caregiving. I don't dispute that there are some
2 issues that Mr. Patel's son has and continues to have
3 to deal with, but, again, he's an adult and these do
4 not seem to be what I would characterize as severe
5 issues that would require the sort of full-time
6 caregiving.

7 That's all I have. Thank you.

8 THE COURT: Has the government looked
9 into -- I mean, there are tens of lawsuits listed as
10 an attachment to the presentence report that have been
11 brought against this defendant and his entities.
12 There must be, I don't know, close to 60, 70 lawsuits
13 in the last several years. I have dispositions on
14 about a third of them. I don't have dispositions on
15 the rest of them.

16 Has the government looked into any of
17 these? I questioned the probation officer this
18 morning about it, and she said her initial research
19 had indicated that many of these were complaints based
20 upon fraudulent transactions alleged against the
21 defendant. Have you looked into those?

22 MR. ABELY: Your Honor, I have looked at
23 some of these lawsuits. I cannot represent I've
24 looked at all of them because there are a big number,
25 but I've familiarized myself with some of the

1 allegations in the lawsuits. You know, some of which
2 are lawsuits brought by investors who might be
3 somewhat similarly situated to the victim in this
4 case.

5 I think on the one hand there's a
6 temptation to see a pattern there. I think on the
7 other -- I think it's dangerous to read too much into
8 that because I don't think this -- either this
9 criminal case as a whole or this sentencing hearing in
10 particular is the right venue for litigating the
11 merits of these various lawsuits. It would just be
12 too tough of a task.

13 And I also acknowledge that Mr. Patel has
14 a long history in the hotel -- I'm sorry, long history
15 in the hotel industry, as well as in the banking
16 industry. He was involved with two banks right at the
17 crash of the market in the late part of last decade.

18 I think a lot of the litigation is
19 related to that and is not necessarily parallel to
20 this case. And, again, I think without -- I think
21 it's just hard to take the allegations in a civil
22 complaint and to treat those as either right or wrong
23 in assessing -- in assessing his conduct.

24 I think the government's position is just
25 that it's the conduct in this case, the conduct to

1 which Mr. Patel has pled here should be front and
2 center in the Court's -- in the Court's analysis, if
3 that makes sense.

4 THE COURT: Okay. I think you may have
5 had some victims come in.

6 MR. ABELY: Do you mind just giving me
7 one moment, Your Honor?

8 So, Your Honor, just for the record, I do
9 believe that Mr. Kisan is present in the courtroom.
10 He had previously indicated in my office that he
11 wished to rely on his written submission to the Court
12 and did not wish to make a statement. I'll just sort
13 of look back and make sure that's still the case.

14 It appears to be the case. Yes, Your
15 Honor. Thank you.

16 THE COURT: Thank you. All right.

17 Mr. Samuel.

18 MR. SAMUEL: Thank you. Good afternoon,
19 Your Honor. I'm Don Samuel, I practice law in Atlanta
20 with Ed Garland, who's my partner. Let me address
21 first a couple of the comments that Mr. Abely made,
22 almost all of which I agree with. He's too
23 reasonable. I just told Mr. Hardin, he's too
24 reasonable.

25 THE COURT: He's a very reasonable

1 prosecutor. You're very lucky.

2 MR. SAMUEL: I would much rather have an
3 AUSA like we have in Atlanta who'd exaggerate about
4 everything and make all kinds of false claims that are
5 easy to refute. That's, unfortunately, not the case
6 with Mr. Abely.

7 Let me tell you our view of the
8 transaction first because I'm not entirely sure we
9 agree with Mr. Abely about that. Mr. RC Patel was a
10 prominent member of High Trust Bank, which was going
11 to be submitting -- did submit the bid for the
12 mortgage on the Best Western property, which was in
13 downtown Atlanta.

14 I read Mr. Blackman's grand jury
15 testimony. I've also spent considerable time,
16 whenever it was, two years ago talking to his lawyer
17 and interviewing him through his lawyer, so I know --
18 I also have a version of events through -- from
19 Mr. Blackman.

20 THE COURT: And he wrote a letter on your
21 behalf.

22 MR. SAMUEL: Right. His view when I
23 talked to him and, again, through the lawyer -- I
24 don't want to misrepresent that I talked to him
25 directly. He had a lawyer, Richard Hendrix, very

1 prominent lawyer in Atlanta, who appeared with him at
2 the grand jury and he asked me to go through him
3 rather than directly speaking with Mr. Blackman.

4 But I sent a set of written questions and
5 got -- received answers back from Mr. Hendrix. Their
6 view -- Mr. Blackman's view through Mr. Hendrix was
7 that High Trust was going to bid on the mortgage,
8 expected to win the bid. They weren't bidding low,
9 they expected to win the bid. This was all a result
10 of Integrity Bank, one of the largest community banks
11 in Georgia, going under. Nothing to do with us.

12 When it won the bid, it was High Trust's
13 practice not to keep the mortgage, but to simply then
14 sell it themselves. Sometimes they would retain a
15 servicing agreement where they would then collect the
16 money from the debtor, but that they would customarily
17 sell the mortgage or flip it, if you will, to try to
18 make money on the transaction.

19 That was exactly what RC Patel envisioned
20 happening. He was a 65 percent owner of the bank,
21 obviously a very prominent member of the bank. What
22 he anticipated doing and Mr. Blackman, though he
23 didn't have specific conversations about this, said
24 this was, in fact, the kind of thing that High Trust
25 did is that they would then sell the mortgage to RC,

1 there would be an increase in the price. That's why
2 High Trust was willing to do this, because they would
3 make an immediate profit on it. And then they would
4 get the servicing agreement.

5 In fact, when I talked to Mr. Blackman's
6 lawyer, he said they had a number of conversations
7 with servicing agreements. They even sent me a draft
8 of one that they were going to use with the Red Roof
9 Inn that was being bid at the same time, exact same
10 auction, where they had drafts of servicing agreements
11 where they would win the bid, win the mortgage, sell
12 it and then be the servicing agent. They would then
13 collect the money from the debt. So it was
14 profitable --

15 THE COURT: Did you say sell it to the
16 defendant?

17 MR. SAMUEL: In this case, it was going
18 to be to RC, that's right. RC would purchase it.
19 That also explains why in Mr. Abely's argument he
20 says, why would he tell Mr. Kisan that it was,
21 whatever the numbers are, 1.2 million when, in fact --
22 or 1.3 million when, in fact, the bank submitted a bid
23 for considerably less.

24 The answer is that the bank was going to
25 sell it to RC for more. The bank was going to make a

1 profit on the transaction. This is what RC intended
2 as opposed to the most sinister view of things, which
3 is that there never was a mortgage, there never was
4 going to be a mortgage. It was owned by the bank
5 which had no intention of ever partnering with
6 Mr. Kisan.

7 And Mr. Kisan knew that the bid was not
8 being made directly by RC. We said it in our memo.
9 It's in the stipulated facts. It's in the PSR that
10 Mr. Kisan knew it was going to be the bank making the
11 initial bid to Debt-X, which is the name of the
12 auction company. None of this happened.

13 So it's kind of hard to say empirically,
14 this is what everybody intended because we don't
15 have -- you know, any post hoc evidence of what their
16 intent was because it didn't go through because the
17 bid didn't win.

18 The one other factor we would point out
19 to kind of support our view of what was going to
20 happen is if you look at the bid, you'll see that
21 what's known as the UPB, the unpaid -- the percentage
22 of unpaid balance has a lot of 7s at the end of it.

23 I know this sounds a little too much
24 numerology, but every time Mr. RC Patel ever buys
25 anything, he always does it with 77 cents or something

1 and adds 77 at the end. It's his -- it's his mark of
2 Zorro, if you will, and that's what the High Trust bid
3 was in this case.

4 If you look at the exhibit attached to
5 the government's submission, Exhibit 1, you'll see
6 that the bid ends in a bunch of 7s. The UPB price.
7 So, again, that shows RC's close involvement in the
8 decision, as well as his son, Jay Patel, which
9 Mr. Blackman also says, he was so intimately involved
10 in making this bid for the bank because he planned to
11 buy it from the bank.

12 So that's a very long answer to the
13 question, what was their intent. The intent, RC's
14 intent was not to simply, you know, get \$500,000 from
15 Mr. Kisan for some asset that never did or never would
16 exist. I don't think that's correct.

17 THE COURT: But the fact -- the fact
18 remains that he -- he sent that money immediately to
19 pay off a personal loan.

20 MR. SAMUEL: That's absolutely true.
21 Same day, I believe.

22 THE COURT: Yeah.

23 MR. SAMUEL: And that's why there's a
24 factual basis for this here. It's not that he was --
25 exactly what you posed initially. There was not an

1 intent to convert the money forever. It was
2 inappropriate, unlawful borrowing of the money, if you
3 will. It was a misappropriation of the money, what
4 was intended to be for a very short time.

5 It was his -- he didn't know everything
6 was going to come to an end, you know, in December of
7 2008, that his bank would fail, his other bank failed
8 three or four days later. I mean, things really
9 became chaotic very, very quickly in late '08.

10 I put in my sentencing memorandum,
11 you-all in the state of Tennessee had five bank
12 failures over the course of five years. Heck, we were
13 having five a day, it seems like. I mean, 75 bank
14 failures. More in Georgia than any other state in the
15 country.

16 And it was the community banks, which
17 RC Patel was the major player in two of them, High
18 Trust and Havens Trust. It was complete chaos. And
19 my partner and I were involved in litigation involving
20 these. Some criminal, some civil, representing board
21 of directors. It dominated our -- not our practice
22 necessarily, but it was a big part of our practice.

23 And they -- Alston & Bird in Atlanta, I
24 mean, everybody -- just nobody thought it was coming
25 that bad. And the rest of the country suffered a lot,

1 but nothing compared to what happened in Georgia.

2 So as Mr. Abely said and just about
3 everything else, I just can't fuss at him at all. He
4 gets the 500,000, he misappropriates it. He uses it
5 for his own personal debt, which was coming due
6 immediately. Expected to win the auction, didn't.

7 He and Mr. Kisan have known each other
8 for 25 years, were family friends. They end up in
9 India together at a New Year's Eve party, and by that
10 point he knows they haven't won the auction, and
11 Mr. Kisan asks what's going on and he doesn't tell him
12 the truth. He just doesn't have -- doesn't tell him
13 the truth.

14 Within four weeks he tells Mr. Kisan that
15 I need to pay you the money back, we didn't win the
16 auction. Some discussion about the EPA, that makes no
17 sense whatsoever. But he's got to pay the money back.
18 And a couple weeks after that he actually brings him a
19 check and says, don't cash this. It's not a good
20 check now, but I owe you this money.

21 Now, 35 years, I've done a lot of fraud
22 cases. You don't generally see within eight weeks
23 someone bringing the check back saying, I did it, I'm
24 wrong, I need to give you this money back. Please
25 give me some time to make the check good.

1 What happens after that is -- there's a
2 lawyer here in Nashville, Ernie Williams, kind of
3 represented them both over time, and within a matter
4 of months a number of documents that I've shown to
5 Mr. Abely over the years that we've been fussing about
6 in this case, Mr. Kisan says, I want you to apply that
7 \$500,000 to this other transaction we did. I want a
8 bigger percentage of the other hotel.

9 And there's letters written about that.
10 There's deposition testimony about that. The
11 long-lasting litigation wasn't because Mr. Patel said
12 I won't pay you back or I can't pay you back. Neither
13 of those were true. It was because they couldn't
14 agree on a number.

15 It would have been very easy to say I owe
16 you 500 and I owe you 750, but Mr. Kisan's lawyers
17 were very aggressive lawyers. Nothing wrong about
18 that. It's the way civil litigators are. And they
19 wanted more, they wanted more.

20 At one point they were asking for two
21 million. And, you know, we want the entire -- the
22 Myrtle Beach hotel.

23 THE COURT: Is this Ernie Williams the
24 bankruptcy lawyer or Ernie Williams the former US
25 attorney?

1 MR. GARLAND: I think he's the bankruptcy
2 lawyer.

3 THE COURT: Okay.

4 MR. SAMUEL: He was not the lawyer in the
5 case. He initially tried to negotiate between them
6 because he had represented both of them over time. It
7 ended up being a South Carolina case with South
8 Carolina lawyers who were very, very aggressive
9 lawyers.

10 So that's what happened. I mean, you
11 have a \$500,000 case here with an attempt to pay it
12 back fairly quickly, with an almost immediate
13 acknowledgment of wrong-doing. And then litigation
14 that prolongs it.

15 Mr. Abely mistakenly said the payments --
16 the settlement was after the criminal case. That's
17 not accurate. If you look in our notebook, the case
18 was settled before the indictment. It was paid over
19 time, the final payment wasn't paid until December,
20 but the case settled before RC was indicted.

21 THE COURT: The civil case.

22 MR. SAMUEL: Correct. So I think that's
23 an important fact. Obviously you asked the question
24 and I think for good measure. You know, people who
25 settle after being indicted, you know, how much good

1 can you say about that. But people who settle before
2 you get indicted, you know, obviously there's an
3 interest in not getting indicted, but still, he
4 never -- and if you read the depositions from 2011,
5 2013, every time he's asked a question by the opposing
6 lawyer, do you owe this money, he said, of course I
7 owe the money.

8 I mean, I sent excerpts up to Ms. Landers
9 of all the deposition transcripts. I said, he's never
10 denied it. There was never any allegation of -- that,
11 oh, no, I'm entitled to this money or making up stuff
12 or -- I owe you the \$500,000.

13 At one point the lawyer says during the
14 deposition, why don't you just write me a check right
15 now. He says, I would. If we could settle this case,
16 I'd write you a check right now. But the lawyers
17 didn't want to do that.

18 According to Mr. Kisan's lawyer, the
19 lawyers charged him \$500,000 for this case. I don't
20 know if it's true or not. I'm not privy to his fee
21 agreement, but my understanding is he ended up suing
22 his lawyers. So this was just not RC's fault. This
23 case should have been -- this never should have been a
24 criminal case. It never should have been a civil
25 case.

1 They should have figured out a way to get
2 money paid back fairly quickly, just like the hundreds
3 of disputes we had in Atlanta when banks failed and a
4 lot of people were losing money quickly.

5 So it is an exceptional case. Is it
6 exceptional restitution and, you know, like the *Kim*
7 case that we cite or the other cases where someone
8 goes out and sells his house just to make restitution,
9 no, I'm not -- we don't suggest that. We said -- what
10 we said to you is exactly what the truth is, that he
11 always admitted, always willing to pay the money back.

12 They couldn't come to terms, and every
13 penny was paid back without the need of the FBI or the
14 US Attorney getting involved. It wasn't that kind of,
15 you know, payment a couple weeks before sentencing.

16 So we ask you to accept -- we ask you to
17 consider that as a significant 3553(a) factor when
18 considering the nature of the offense. It is a -- let
19 me also say, Mr. Abely said he takes issue with my
20 argument that he wasn't defrauding a bank or the
21 government. And I get his point.

22 Obviously if you're defrauding the
23 paradigmatic little old lady that's got no money, that
24 is worse, I guess, than the bank or the government.
25 But the reason that the guidelines are higher when you

1 defraud banks and you defraud governments is because
2 they have a more difficult time protecting themselves,
3 right. The government's just too big. Banks, you
4 know, have to rely on the honesty of their customers.

5 Mr. Kisan is not someone without
6 resources. He's fairly wealthy, been a very
7 successful businessman, very successful. He didn't
8 deserve to have his money taken from him. Not saying
9 that, but he's gotten his money back. He's been paid
10 in full. He's been given a certain amount of profit
11 on top of that. Settlement was in excess of the total
12 amount of money received.

13 So that's why I put that in the brief
14 that it's not like, you know, cheating the government
15 or taking a million dollars from the bank that you
16 have no intention of paying back.

17 So we stress those facts regarding the
18 nature of the offense. It is an unusual case, whether
19 you have cases like this up here or not all the time,
20 obviously I don't know.

21 So part two, I guess, is the enormous
22 community support, a lot of which is behind me here in
23 the courtroom today, people who feel very indebted to
24 RC for what he's done in business, with the banks.
25 His lending to other people in his community, First

1 Indian American banks in Georgia. Very prominent in
2 the hotel industry. You've got letters from people in
3 the hotel industry talking about, you know, helping
4 other businessmen. His family, what he's done for his
5 family and extended members of his family, pretty
6 remarkable.

7 His whole upbringing, born in New Ghanda,
8 under Idi Amin, ending up in London, no money. Comes
9 here, brings his family, pretty remarkable, all things
10 considered, you know, the man you're getting ready to
11 sentence here and his background. It's an
12 extraordinary background.

13 And extraordinary things that he's done
14 with his life. His charity, his help to other people.
15 I mean, I've known RC a long time. I've got to tell
16 you, I'm not a witness, I'm a lawyer, but I've known
17 him and his brother Mike and other members of his
18 family.

19 I can't tell you how many years we've
20 been -- I've dealt with some of the bank cases with
21 him, civil cases with him. Represented his brother
22 Mike in cases and Jay, who's here. I've represented
23 in all kinds of litigation they've had. I had no idea
24 some of this charitable stuff.

25 Doesn't that tell you something? I mean,

1 I've known him for years and I didn't know anything
2 about all the good work he's done and the charity he's
3 done because he doesn't brag about it. He doesn't
4 come to the office and say, you know, Mr. Samuel, I'm
5 here, but I'm going to do some charitable events and
6 you should do me something in return. He doesn't brag
7 about it. He just doesn't. And I think that's a good
8 sign of his character.

9 And I'm not going to go through the
10 letters, you've read them. There's no reason for me
11 to. I'd add that my partner is going to introduce you
12 to the members of the public who are here without
13 having any testimony. Mr. Hardin, who's been very
14 helpful the last couple months in this case, is going
15 to wrap up.

16 Civil litigation, you asked about that.
17 Because of our concern with that -- and Ms. Landers
18 and I talked about that a lot and I appreciate her
19 talking to me many times in preparation for the PSR.

20 I'm going to give you two-second overview
21 and tell you that the lawyer who represents RC in most
22 of the civil litigation is here and will answer any
23 question you have about specifics. And I think it's
24 important for you to hear since it's on your mind,
25 Brian Knight is here sitting in the front here, who's

1 his lawyer in most of his little civil cases.

2 First of all, even though on a
3 spreadsheet it looks like 93 cases, if you just look
4 at the style of the case, you can see it's the same
5 case over and over and over again. You know,
6 State Bank --

7 THE COURT: Well, they're not tiny
8 judgments either.

9 MR. SAMUEL: No, he's guarantor --

10 THE COURT: We're talking about
11 multimillion-dollar judgments.

12 MR. SAMUEL: He's a guarantor on these
13 large notes. When he owned 200 hotels and banks, he's
14 constantly signing guaranties on loans to one of his
15 dozens and dozens of corporations that own the
16 individual hotels. Everything goes under, everybody
17 sues you on your note.

18 In the State Bank of Texas if you just
19 look at the list, that's 10 cases. It's all the same
20 case. It's just being filed in DeKalb County,
21 dismissed, filed in Fulton County. There's a federal
22 case there that Brian will tell you about where he
23 files it District Court, gets dismissed, goes to the
24 11th Circuit, back to the District Court. Five
25 entries on the spreadsheet for the exact same case.

1 I've gone through some of those cases --
2 I was the lawyer in a couple of them, the mediation
3 with the FDIC. There's no evidence of any fraud
4 there. The FDIC took over Havens Trust Bank and, you
5 know, all the directors got sued. I represented RC
6 and his brother Mike, and Alston & Bird represented
7 the other, I don't know, 20 directors. There was no
8 fraud there there was just the FDIC trying to figure
9 out how to sort out the assets.

10 Some of these cases are slip and falls at
11 the hotel. Some of these cases, you'll see one of
12 them's from a mold company. One of them deals with
13 fighting over an easement to the parking lot next
14 door. So the sheer number is a little unfair.

15 I mean, everybody said I had to mention
16 Donald Trump here. I mean, he gets lots of lawsuits
17 too. We do tend to settle our lawsuits, as opposed to
18 him, and a lot of these have nothing to do with any
19 allegations of fraud.

20 A couple of them do have allegations of
21 fraud. Some of them are family members. And I'd ask,
22 when I'm done, if Brian can stand up and just kind of
23 address the Court with regard to those. And I am
24 about done.

25 I've told you -- again, you see all the

1 charitable work, you've seen the videos, so I don't
2 know what more I can add about that. I think among
3 the lawyers here I know more about the facts of this
4 case than anybody else, so if you have any questions
5 about the nature of the offense or anything I've
6 talked about, probably ought to ask me rather than my
7 colleagues here because I probably know the facts a
8 little bit better.

9 But otherwise I'm going to ask Brian
10 Knight to address you with regard to the -- make sure
11 I'm not leaving anything out here quickly.

12 THE COURT: All right.

13 MR. SAMUEL: This is Brian Knight, also a
14 member of the Georgia bar.

15 THE COURT: Good afternoon.

16 MR. KNIGHT: Good afternoon, Your Honor.
17 I've been representing RC for the last 10 years, so
18 I've seen the good times when he was making a lot of
19 money, doing a lot of deals, and in '08 during the
20 crash. And I will tell you, all of those -- I was
21 involved in almost all those cases that you've seen.

22 Out of all of those, there's only two
23 pending cases right now. Either they've been -- we've
24 done consent judgments. Most of those consent
25 judgments that you see are for bank notes. He's a

1 guarantor on a bank note, property was foreclosed by
2 the bank, he's left sitting there. And we did consent
3 judgments. Those are the majority of the cases. And
4 even with those judgments, we've still worked it out
5 with the bank. RC still had good relationships with
6 them. They haven't come after him on a lot of those.

7 In terms of the fraud cases, because
8 those are the most important that I know you want to
9 address. Out of all those cases, there was three --
10 there's three lawsuits that allege fraud. One -- one
11 was a partnership, that was the SR20 case, and that
12 was settled immediately. They've been -- that case
13 has been dismissed. There was a fight over the value
14 of a property and we settled that one.

15 There are two pending fraud cases right
16 now, one is Prakash Patel. He's RC Patel's
17 brother-in-law. He wrote a letter to Your Honor.
18 Prakash was a -- was a resident of -- a citizen of the
19 UK. RC brought him over here to help him get a job.

20 Got him a job on his one project called
21 the Carnegie Hotel project. Also helped with his
22 brother-in-law's visa. There were talks about giving
23 the brother some ownership in the company. Never
24 written down, no operating agreement. In the hotel.

25 Hotel sells. RC escrows \$700,000 for

1 Prakash Patel. Prakash wants a million, and that's
2 how this whole dispute started. My firm was entrusted
3 with the \$700,000. The lawsuit, that lawsuit actually
4 is just a motion to enforce settlement agreement
5 because we had a settlement agreement that we were
6 going to pay him over time. And there was some
7 allegations of fraudulent transfer.

8 We settled that. We paid Prakash
9 \$700,000 in exchange for releases, because what
10 Prakash did is he brought in RC's wife, his kids, his
11 companies. And this -- and this was a tactic that was
12 used to force the settlement. There was -- it was
13 paid the 700,000 for the releases.

14 The only aspect that was left was a
15 \$500,000 note that RC guaranteed to pay back in three
16 years. And that wasn't paid back in three years. RC
17 doesn't have the money. So he filed a new suit.

18 And guess what? They sued RC's wife,
19 brother, nephews, kids, done everything all over again
20 as a tactic to try to get paid. So that suit,
21 Your Honor, is simply just a suit on note case.

22 The other suit is the Paresh Patel case
23 in which Paresh also sent you a letter. This case,
24 Your Honor, was filed --

25 THE COURT: Wait a minute. You just said

1 that the brother-in-law was Paresh.

2 MR. KNIGHT: That was Prakash.

3 THE COURT: Oh, Prakash.

4 MR. KNIGHT: Prakash. So that's the case
5 where we've paid \$700,000, we've got releases, we
6 didn't pay back a note, but that's all the case --
7 it's only a note case, it's not a fraud case. Which
8 this was just filed, Your Honor, in -- a couple months
9 ago, so we're dealing with that. We're going to be
10 filing a motion to dismiss on Wednesday.

11 The other case, Your Honor, is Paresh
12 Patel. This one is frivolous. It's already been
13 dismissed once by Steve Jones in the Northern District
14 of Georgia. He alleges that in 2008 his mother made
15 an investment into a hotel deal, \$400,000 investment.
16 RC over the last 10 years paid back that loan, paid
17 back over \$500,000.

18 The mother passed away in 2009, and the
19 son, Paresh Patel, he asserts a fraud claim. Steve
20 Jones, Judge Jones, dismisses the case, says you
21 cannot assign fraud claims. Your mother who passed
22 away can't assign you a fraud claim. Plus you're out
23 of statute of limitations.

24 This alleged misrepresentation happened
25 in 2002, and you're outside the statute of

1 limitations. So Judge Jones dismissed it.
2 11th Circuit, we go to argue it in the 11th Circuit.
3 11th Circuit says, well, the trial court, there was a
4 motion to amend the complaint that the trial court
5 never addressed. So 11th Circuit punted and said,
6 we're going to grant that motion and allow you to
7 amend your complaint.

8 They've amended that complaint, we filed
9 the same motion again, it's still pending. Those are
10 the only two fraud cases, Your Honor.

11 THE COURT: What about the letter
12 alleging another case by Rishi Kapoor, Coconut Grove,
13 Florida?

14 MR. KNIGHT: And that's the Rishi Kapoor
15 case. That was the only case that I was not -- that I
16 didn't work on, but I do know the facts of that case.
17 And in that case there's already -- Rishi Kapoor
18 already has a judgment against RC in that case.
19 There's already a judgment issued. So that case is
20 over. But, Your Honor, that is the one case that I
21 did not work on.

22 THE COURT: Okay. All right, thank you.

23 MR. KNIGHT: Thank you.

24 THE COURT: All right. Mr. Garland, are
25 you next?

1 MR. GARLAND: I'm next, and I will be
2 quite brief. What I would like to do, may I talk from
3 here, Your Honor?

4 THE COURT: Why? Because you need to see
5 the audience? Okay. That's fine.

6 MR. GARLAND: What I would like to do is
7 to introduce, without them addressing the Court, the
8 various people that are here. And make a brief
9 comment first about the son who was mentioned.

10 THE COURT: Mel?

11 MR. GARLAND: Mel. Mel could not be
12 here. Mel was born with a neurological condition and
13 has had extraordinary family support, principally from
14 RC. And the rest of the family, but he's been
15 critical, along with his wife.

16 They got education for him under
17 extraordinarily difficult circumstances, and he did
18 marry, but his neurological condition caused that
19 marriage to fail within shortly over a year, 14
20 months. And she has left and no longer lives in the
21 home.

22 So it is a real condition and it's not
23 something that -- we would ask the Court to take it
24 into consideration with everything else.

25 THE COURT: Let me -- there was one of

1 these letters which mentioned -- I'll just tell you
2 who it is. Mukesh Desai said that -- and I don't know
3 where he lives. I guess he lives in this area. He's
4 got a 615 area code. He says his eldest son Jay,
5 middle son Mel and youngest son, Sonial, are all
6 successful individuals.

7 MR. GARLAND: Well, it's certainly true
8 of the other two. And in respect to RC's efforts to
9 create that vision of his son in his son, I think what
10 we have presented is an accurate description. And may
11 I have just a moment?

12 He is successful in that even with the
13 neurological condition he works in one of the hotels.
14 So I think you would say within the context of his
15 capacity. The other two sons certainly are successful
16 entrepreneurial, honest businessmen.

17 So his friends who are here -- first I'd
18 like to introduce the family with the exception of his
19 son, who couldn't be here today. We have first his
20 wife. Would you stand.

21 THE COURT: Yeah, would you stand so I
22 can see you when he introduces you.

23 MR. HARDIN: Ms. Shama Patel. We also
24 have present one of his three sons, Jay Patel. And
25 Sonial Patel. We have his sister, Tanu Patel. I got

1 the name wrong.

2 THE COURT: Okay.

3 MR. GARLAND: Your Honor, many of them
4 are Patels. Alka is her first name. The one I
5 introduced as a sister, in fact, is a cousin.

6 THE COURT: The one in the front row?

7 MR. GARLAND: Yes. And the one in the
8 back row is his youngest sister. Sam Patel is his
9 brother. And Asvin Patel, his cousin. Those are the
10 family members that are here today, Your Honor.

11 There are -- the rest are friends that
12 come out of his charitable work, his community work,
13 and his work in hotels and real estate development.
14 He has owned and developed over 125 hotels, as well as
15 created the first Indian bank in Georgia, the second
16 one in America.

17 So that's where the friends come from,
18 and they are from all over. As Your Honor knows, he
19 lived here in Nashville for a while or adjacent to
20 this community. And so from Atlanta, we have Debbie
21 Barber, the director of the Youth Ensemble of Atlanta,
22 who has known him for many years. I know you're
23 familiar with that.

24 THE COURT: Looks like there's lots of
25 talent in that group.

1 MR. GARLAND: And she has brought with
2 her some of the young people who know Mr. Patel, that
3 work with him. And they insisted on coming to show
4 their support. Thank you.

5 Next I'd like to introduce Bobby Patel.
6 Mr. Bobby Patel is from here in Nashville -- excuse
7 me, I've got my cities wrong. It's Atlanta. He is
8 the head of the Indian Temple in Atlanta and that is
9 in the Ishmaili community -- wait, this is in the
10 Hindu community. All right. Then -- thank you, sir.

11 Then we have Riaz Ali who is here. He's
12 the Ishmaili Temple and community of Atlanta. That is
13 some 10,000 people in the Atlanta area. Thank you.

14 We have Gary Lambert, from the Middle
15 Tennessee Mission Organization of Springfield,
16 Tennessee. He is a person who leads humanitarian
17 efforts and he's on the video and you've heard from
18 him. Thank you.

19 We have Hina Patel, a close family
20 friend, who has come. Friends of the entire family
21 from Atlanta. We have King Patel, a friend from
22 business in the motel business. He is from Maryland
23 and he's come here to show his presence.

24 We have Manish Patel. He is a friend
25 from Pennsylvania who has driven down to show his

1 support. We have Anila Patel, a friend from
2 New Jersey. We have Bipin Das. Mr. Das has been a
3 friend since he was in kindergarten in London, and he
4 has come to show his support. He now lives, I
5 believe, in Ohio.

6 We have Autul Gordon, a friend from here
7 in Nashville -- he's not here, excuse me. We have
8 Mukesh Desai, a friend from here in Tennessee. We
9 have Bimal Patel, he's from here in Tennessee. We
10 have Denny Painter, an attorney and friend from
11 Atlanta. And we have Melanie Hamed -- she's not here,
12 okay. Excuse me, Your Honor.

13 Your Honor has received a letter from
14 Doug Collins. Mr. Collins is here. Mr. Collins is
15 formerly the head of two public companies, the
16 Days Inns of America that I'm sure Your Honor is aware
17 of and American Best Franchises.

18 I would just point out that he has known
19 Mr. Patel many, many years, and he knew it -- knew him
20 when Mr. Patel was the driving force and founding
21 member, one of the founding members of the Asian
22 American Hotel Owners of America. AAHOA is the short
23 pronunciation.

24 That now has over 10,000 members, and
25 they own over 50 percent of all the hotels in America.

1 Mr. Patel has been a leader in the development of
2 that, which has had the positive effects on the lives
3 of thousands of people. We have Adam Firth -- he
4 didn't make it.

5 Those, Your Honor, are the people who've
6 come in support. What they illustrate is diversity
7 across America where he has had loyalty developed from
8 these people, and they truly know, you see through
9 their letters, what kind of man he really is.

10 I just want to briefly comment on what my
11 partner said. When the banks collapsed, Mr. Patel had
12 83 bank accounts from 83 businesses and the world just
13 ended around him. It was in the context of that chaos
14 when he made the serious error he made. You've heard
15 the context, it was another business deal.

16 Now, Mr. Kisan wanted to be in business
17 with him because he knew what a wonderful businessman
18 he was. And the intent was to make a profit for
19 everyone. I want to point out, when the bank would
20 make a profit, they'd buy these loans, 65 percent of
21 the bank was owned by Mr. Patel and his family.

22 So when it was -- they could mark the
23 loan up, it went to the benefit of the bank and also
24 to Mr. Patel. They would then go to the person who
25 owed the loan who might have a huge hotel that he

1 owned, couldn't settle -- that person can't settle
2 with the FDIC because they won't settle with the
3 person that owes them. You then go to the person that
4 owed the note, mark it up, make a profit.

5 So it was a very legitimate way to do it,
6 and Mr. Kisan wanted to be part of that. And that was
7 what was intended. It was during this crisis that
8 this lapse and wrongful conduct took place. I just
9 try to put in the context of chaos.

10 And in chaos with the complexity of what
11 was happening around him, with an intent later to pay
12 it back, he found himself making errors that he made.

13 THE COURT: Thank you.

14 MR. HARDIN: Your Honor, I'll be very
15 brief. I'd like to call the Court's attention to
16 recommended special conditions that Ms. Landry (sic)
17 has submitted. In Paragraph 4 -- I'll read it, it's
18 very short -- the defendant shall not manage, solicit,
19 accept or otherwise oversee any investments, payments
20 for investments or capital funding from -- for or any
21 individual or any business entities while on
22 supervised release.

23 I mean, we respectfully submit that that
24 is a little overly broad, and it effectively would put
25 him out of business in trying to pay back all of his

1 debts. And I think -- we're talking about debts,
2 little small thing. It's interesting to me that he's
3 never filed for bankruptcy, even though he probably
4 should have. He wants to pay back his debts. If you
5 give him these -- this prohibition, he'll not be able
6 to do the charity events that he is doing.

7 If you look at what he's done, this man
8 is a one-man Peace Corps. He's done Little League
9 baseball or sports up here in Goodlettsville, all the
10 way to Honduras and all the way to India. It's a
11 remarkable -- no matter what else happens in this
12 case, you've got to say the man is remarkable.

13 THE COURT: Why haven't you objected to
14 this special condition so you-all could have talked
15 about this and tried to figure out what makes more
16 sense?

17 MR. HARDIN: Your Honor, we probably
18 should have done that. I, quite frankly, was looking
19 at it a couple of days ago and it jumped out at me
20 that this is something that's very Draconian, and
21 you're absolutely right. We should have done that and
22 we just didn't do it. I apologize to the Court.

23 On page 1 of our memorandum, I wrote that
24 it is no easy task for a court to comprehend the
25 defendant that's in front of you. That's the case

1 here with Mr. Patel. In any case there's differing
2 opinions. There's folks here that are highly upset
3 and folks here that love the defendant and stand by
4 him no matter what.

5 I submit to you that in trying to get at
6 the core soul of an individual, we should look more
7 and more to the small things that they do. As I said,
8 he's never been to bankruptcy, which I find to be
9 absolutely astounding.

10 I never knew Mr. Patel until about four
11 months ago, but I knew his name years ago. I was in
12 an office in Atlanta, an entertainment lawyer, Jeffrey
13 Smith, and he probably represents more celebrities
14 than any other lawyer in the United States. And he
15 has all these Grammys on the wall and there's a
16 beautiful picture -- pictures of the Taj Mahal in
17 India.

18 I questioned him, how did you take those
19 pictures there? They're just phenomenal. He said,
20 well, I'll tell you. In idle conversation I was
21 talking to a man named RC Patel, and I said, I'm going
22 to India and I want to take some photographs for my
23 bride. And that was about the end of the
24 conversation.

25 When he got to India to the Taj Mahal,

1 there's this big sign up there that says Welcome Jeff
2 Smith. And he was given access -- because of
3 Mr. Patel, given access to areas of the Taj Mahal that
4 I understand nobody's ever been given access to. He
5 had these phenomenal photographs to give to his wife.

6 And he said -- he said years later, he
7 said, I was campaigning for this Supreme Court Justice
8 in Georgia who was an African-American, who was
9 running against a racist, and they were losing 60 to
10 40.

11 He says he calls Mr. Patel and explains
12 his situation to Mr. Patel, and Mr. Patel organized
13 the Asian population throughout Georgia and the Indian
14 population, and this lady won. And I thought those
15 were great stories. I didn't think any more about
16 them, but -- until today.

17 But I think these small stories, these
18 little tidbits give an insight into the soul of this
19 man. Certainly he's done wrong, there's no question
20 about that. But how many people appear before you --
21 if you watch that video, and I'm sure you did -- that
22 have such an astounding past and such astounding
23 deeds. They were done long before this, not in
24 preparation to appear before Your Honor.

25 For these reasons, we ask that he be

1 given probation and allow him to pay back to the
2 community instead of having to pay it back to a
3 federal penitentiary. Thank you, Your Honor.

4 THE COURT: Thank you.

5 Mr. Patel, you have the opportunity to
6 address the Court and tell me anything you want me to
7 hear before I sentence you.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay.

10 THE DEFENDANT: Good afternoon,
11 Your Honor. I am not a public speaker, but I would
12 like to express some of my feelings, if I may. It is
13 very humbling experience to appear before you today
14 and appear before my family and my friends and
15 business colleagues, something which I thought I would
16 never have to do.

17 The most overwhelming emotion I feel
18 right now is gratitude for these people who have come
19 here who have been here to support me. For the past
20 couple of years since this criminal case started there
21 have been many, many times when I thought I had no
22 friends, no support, and there have been many times
23 when I was alone and scared.

24 I unwillingly hurt everyone, especially
25 those who are important to me. Today I realize that I

1 have a lot of friends, though I certainly don't
2 deserve all the kind things they've said about me, and
3 I've obviously let them down by my behavior in 2008.
4 Knowing that I had these friends and family with me
5 means more than I could possibly tell you.

6 The decisions I made in 2008 during those
7 terrible chaotic days in 2008 and early 2009 were
8 terrible decisions. After spending years, in fact,
9 decades, building several businesses, including
10 hotels, banks, and other stable and successful
11 businesses, over the course of a few months I
12 experienced what so many other businesses experienced
13 when the market crashed.

14 And my response was wrong. It was very
15 wrong. My decisions were terribly flawed. Not a
16 single day goes by as this day is always on my mind.
17 I look back in trying to figure out why my instincts
18 went astray. Why was it that my initial quick
19 decision was to take money from Mr. Kisan. And use it
20 to deal with another problem.

21 I know that at the time I was thinking,
22 no problem, I will just need to borrow the money for a
23 short time, and then I can give the money back to him.
24 That is what I was thinking. It is very foolish
25 mistake. And I was put in a corner. But it is not an

1 excuse for what I did. My instincts do -- my
2 instincts to do the right thing deserted me. What I
3 did was wrong, very wrong. I would like to put this
4 episode behind me.

5 I have learned greatly from this
6 experience. And I would like to start to rebuild my
7 reputation, which will take time. And though I have
8 all these people and family to support me, I know this
9 is my responsibility to start the process of
10 rebuilding my reputation on my own.

11 Thank you, Your Honor, for your time.

12 THE COURT: Mr. Abely?

13 MR. ABELY: I just wanted to clarify one
14 issue, Your Honor. I want to apologize for
15 misspeaking earlier about the date of the settlement
16 agreement and thank Mr. Samuel for correcting me.

17 And just to clarify further. I believe
18 that the parties settled that civil suit in South
19 Carolina in April of 2014. Mr. Patel was indicted in
20 this case in May of 2014.

21 But I would just note to the Court that I
22 was in discussions with Mr. Samuel and Mr. Garland
23 about this case back in the 2013. And, indeed,
24 Mr. Patel had executed a tolling agreement tolling the
25 criminal statute of limitations back in October of

1 2013. So he was certainly aware of the criminal
2 investigation prior to the settlement, but I did
3 misspeak when I said that the settlement came after
4 the indictment in this case.

5 THE COURT: Okay. Mr. Abely, you are
6 asking for 18 months' time?

7 MR. ABELY: Yes, Your Honor.

8 THE COURT: In a very -- but you have
9 constricted yourself to a very small piece of this
10 case. You let him plead to two counts out of 10. And
11 I'm just wondering if you have any further arguments
12 or justification, in light of everything we've heard
13 today, for 18 months of custody.

14 MR. ABELY: Certainly, Your Honor. Let
15 me address that. First of all, let me just say, 18
16 months is a -- is a significant sentence. It is a
17 below-guideline sentence in this case. And I think
18 that recommendation took into account, as I said
19 before, the letters, the support that Mr. Patel
20 clearly has from his friends and family and community,
21 the various and undoubtedly positive tidbits that
22 Mr. Hardin spoke of.

23 \$500,000 is not the biggest fraud in the
24 world, but it's a lot of money. And I think for an
25 individual like Mr. Kisan who's here, that is --

1 again, this isn't money taken from a bank or a
2 government program that has bottomless or near
3 bottomless reserves. This is an individual, a human
4 being. Those of us who work hard every day I think
5 understand how much money that is to your average
6 person.

7 That is an unfathomable amount of money,
8 and I'm not saying that Mr. Kisan -- you know, I don't
9 know too much about his -- his net worth or anything,
10 but I feel very comfortable suggesting that \$500,000
11 is absolutely a lot of money for him.

12 THE COURT: Well, and his -- his
13 restitution statement indicates he's out a whole lot
14 more than \$500,000 as a result of this dispute.

15 MR. ABELY: Yes, it does.

16 THE COURT: Which you have said he's not
17 entitled to. Or probation office has said he's not
18 entitled to that additional I believe \$880,000 that
19 he's requesting.

20 MR. ABELY: Yes, Your Honor. Although --
21 and there's a matter of law and there's the statute,
22 but in terms -- and that is obviously what the Court's
23 confined to in terms of restitution. But in terms of
24 harm here, I think that is -- that is fair game.

25 And I think it's -- and Mr. Kisan's also

1 expressed the toll it's taken on him mentally and in
2 terms of distraction, spending time away from his
3 family and his other pursuits and all that. And I
4 certainly don't dispute that at all. I'm sure that's
5 all 100 percent correct and certainly the Court can
6 factor in.

7 But then at the core of this is \$500,000.
8 That money was Mr. Kisan's by right and law. And,
9 Mr. Patel, as he's candidly admitted today, had a
10 lapse in judgment and wrongly took that money and used
11 it for other purposes.

12 So my recommended sentence, Your Honor,
13 is really largely based on that conduct. I think that
14 is serious conduct. I think it's something that does
15 need to be deterred. And, you know, a lot of times in
16 these types of white collar cases when we have an
17 individual who has -- and I don't dispute, you know,
18 lived in many ways, apart from this instance, an
19 upstanding and productive life, a lot of times you
20 have the argument that it was an aberrant activity.

21 And I know a lot of what we're focusing
22 on here is things that happened over a relatively
23 short period of time, December 2008, January 2009.
24 That is why one of the things I wanted to call
25 Your Honor's attention to in my sentencing paper was

1 this deposition in I think it was May of 2011, so I
2 think that's two and a half years afterwards, where
3 Mr. Patel is still sort of coming up with an alternate
4 and untrue version of events whereby, you know, the
5 reasons that this deal didn't go forward were
6 something other than just the mere fact that he didn't
7 win the bid.

8 He had no right, even on the day that
9 Mr. Kisan paid the money -- and I'm not saying that
10 Mr. Patel knew this or not, but the auction had
11 occurred, he had not won, the deal was never going to
12 go forward. So, you know, it's more than just a lapse
13 of judgment in December 2008 and January 2009.

14 I think it goes forward into that period
15 as he continued the misrepresentations. I know these
16 things are not formulaic and it's not an easy task for
17 the Court to balance what I'm sure the Court sees as
18 serious misconduct with what Mr. Patel's lawyers have
19 today I think very effectively presented as some of
20 his attributes. And it's --

21 THE COURT: You're glad you're not the
22 judge, aren't you?

23 MR. ABELY: On many occasions,
24 Your Honor. On many occasions. And so I don't think
25 I can justify my recommendation any more than I have.

1 Otherwise -- other than to say I think the attributes
2 and various mitigating circumstances the defense has
3 effectively articulated today, acknowledging that
4 justifies a below guideline sentence.

5 But it's my position, specifically the
6 government, that the conduct at issue here is -- the
7 misconduct is serious enough to -- to merit a sentence
8 of imprisonment and one that's sufficiently lengthy to
9 adequately deter this type of behavior.

10 THE COURT: Okay.

11 MR. ABELY: Thank you, Your Honor.

12 THE COURT: Anything else from the
13 defense?

14 MR. SAMUEL: Your Honor, I don't want to
15 belabor a technical point, but it's true the auction
16 occurred before the money was wired. But everybody
17 agrees, nobody at High Trust knew that they hadn't won
18 the bid. Mr. Blackman is absolutely clear about that.
19 He testifies about that. He answered my questions
20 about that.

21 The knowledge that they hadn't won the
22 bid didn't occur for another week or so. I don't know
23 if you caught Mr. Abely saying that. He's factually
24 right, but the significance of it is minimal because
25 Debt-X doesn't tell the losers of the bid that you've

1 lost the bid. They just send something out in the
2 mail in about a week or 10 days.

3 THE COURT: I guess I'm missing
4 something, then. You're saying that this defendant
5 didn't know --

6 MR. SAMUEL: He didn't know.

7 THE COURT: -- that they had not gotten
8 the bid?

9 MR. ABELY: Yeah, I'm not disputing that.
10 And so to Mr. Samuel's point, I agree with Mr. Samuel.
11 This is not something of significance here. I think
12 what Mr. Samuel's pointing out is a factual matter.

13 The auction happened before Mr. Kisan
14 sent his money. I think what Mr. Samuel is saying is
15 that that's really neither here nor there because at
16 the time Mr. Kisan gave the money, Mr. Patel did not
17 know whether or not he'd won, and I agree. I agree
18 with that. I certainly can't disagree with that
19 statement.

20 THE COURT: Okay. But the fact remains
21 he very quickly sent the money off to some other
22 purpose.

23 MR. SAMUEL: No doubt about that.

24 THE COURT: All right. The Court's.
25 obligation is to impose a sentence that is sufficient

1 but not greater than necessary to comply with the
2 purposes of the sentencing statute, taking into
3 account the nature and circumstances of the offense
4 and the history and characteristics of the defendant.

5 The sentence is supposed to reflect the
6 seriousness of the offense, promote respect for the
7 law, provide a just punishment for the defense,
8 protect the public from further crimes of the
9 defendant, and avoid unwarranted sentencing
10 disparities among defendants with similar records who
11 have been found guilty of similar conduct.

12 The guidelines were put into place in the
13 mid '80s because someone charged with a marijuana
14 offense in Nashville might get three years out of a
15 federal court and someone charged with the same
16 offense up in New York City might get two months.

17 And Congress decided that we needed to
18 have more uniformity in sentencing so that, in federal
19 court at least, people charged with the same crime get
20 basically the same sentence.

21 That, of course, doesn't take into
22 account that people are different and our sentencing
23 also needs to be individualized, but the sentencing
24 range, which in this case is 21 to 27 months, that is
25 the advisory guideline sentence, taking into account

1 the offense -- the offense is -- points are assigned
2 based on various aspects to the offense.

3 And then you factor into the offense
4 level the criminal history category. Mr. Patel has no
5 criminal history, so he's in Category I. And so that
6 results in the guideline range of 21 to 27 months.

7 To avoid unwarranted sentencing
8 disparities, I have to start with that guideline range
9 when I am considering what sentence to give this
10 defendant, because the system of uniform sentencing
11 has come up with that sentencing range, given the
12 aspects of this offense, how many victims there were,
13 what the harm was, what the loss was, whether other
14 people were involved, all that sort of thing, to come
15 up with the points here.

16 So I just want people, most of whom in
17 this room are not familiar with federal sentencing, I
18 want to try to give you that little sketch of the
19 considerations that I must look at when I am
20 sentencing people.

21 In terms of the nature and circumstances
22 of the offense in this case, Mr. Patel has pled guilty
23 to two counts of wire fraud, taking place over the
24 course of about three months in 2008 and 2009
25 involving the transfer of \$500 -- \$500,000 from

1 Mr. Kisan, who is here today as the victim of this
2 offense, who was a long-term friend of Mr. Patel, who
3 wanted to become involved in an investment opportunity
4 with him.

5 He sent \$500,000 to Mr. Patel. He wired
6 that money in order to receive a 14 percent share of a
7 mortgage that was to be purchased on a hotel property
8 in Atlanta. That was what he was promised. He wired
9 the money.

10 Mr. Patel, who needed it for another
11 purpose, promptly used it to pay off a personal,
12 unrelated obligation of his, and then proceeded to lie
13 to Mr. Kisan about what had happened at the auction
14 and what happened to his money.

15 He did, in fairly short order, however,
16 tell him that he knew he owed him the money. He
17 apparently did not pay him the money for enough time
18 to hold Mr. Kisan off, and Mr. Kisan sued him in a
19 civil suit. And that civil suit settled after
20 Mr. Patel knew there was a criminal investigation
21 involving this matter but before he was indicted.

22 The Court considers this a serious
23 offense. It caused a lot of harm to Mr. Kisan, who
24 has detailed that for the Court in his victim
25 statement, where he requested additional funds that he

1 considers legitimate harm from this crime.

2 He details a request for some, I believe
3 \$880,000. He is not technically entitled to that
4 amount of money, but that is -- that certainly can be
5 considered as additional harm from this crime.

6 \$500,000 of that is attorney's fees and
7 expert fees, \$240,000 in lost interest at 8 percent,
8 travel expenses and lost income at other businesses
9 and the lost opportunity to invest this money
10 somewhere else. He asserts that he and his attorneys
11 did lots of investigation over six years involving
12 this fraud and that it caused him physical and mental
13 stress.

14 I don't have any reason to doubt that.
15 It hasn't been countered. It's part of the record, so
16 if there was very much to counter this, I guess I
17 would have been told about it. And I haven't been
18 told about it.

19 In terms of the history and
20 characteristics of Mr. Patel, he is 56. He is Indian,
21 born in Uganda. He apparently was ousted from Uganda
22 at some point and moved with his family to England
23 when he was 10. His parents worked hard there. At 21
24 I guess they stayed in the UK and Mr. Patel came over
25 here.

1 He's lived in several cities in the
2 United States, built up a very successful business
3 career for himself. He's married. He has three sons.
4 They all live with him and they all participate in his
5 business, business endeavors.

6 One has some developmental issues, but he
7 does work and is self-sufficient in terms of not
8 needing to be having care on a daily basis. He takes
9 care of himself, but he does have developmental delays
10 of some sort.

11 Mr. Patel has some health issues. He has
12 been a very successful hotel executive, has millions
13 of dollars of assets and millions of dollars of net
14 worth. Lives in a very, very valuable house.

15 His lawyers have done an excellent job of
16 giving me a full picture of Mr. Patel's life and his
17 good works. I do need to say he's a US citizen.
18 Became a US citizen in 2005; is that right?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: 2005 became a US citizen. He
21 has been very active in his community. He has done
22 individual acts of great kindness and great charity to
23 many, many people who have written many, many letters
24 furnished to the Court, and lots of those people are
25 here.

1 He has started nonprofits, he's started
2 apparently the first Indian bank in Georgia that I'm
3 sure was a benefit to his community. He has engaged
4 in a lot of nonprofit activity that's been very
5 beneficial to his community and to individuals.

6 And people from the youth ensemble of
7 Atlanta are here, their director and some of the
8 children participating, particularly touching endeavor
9 that he's been very involved; the Honduran efforts,
10 and they have a representative here as well, the man
11 that helps with that.

12 So a very impressive record of good
13 works. And as Mr. Hardin ably pointed out, these are
14 not good works that all of a sudden started after he
15 knew that he was a subject of a criminal
16 investigation. These are good works that Mr. Patel
17 has engaged in for his entire life in the
18 United States and probably elsewhere. And that is a
19 very impressive record.

20 I am considering all of that in my
21 sentencing. I do not see it as a deterrent to jail
22 time, any kind of family circumstances. Mr. Patel has
23 two very able, smart sons working in his business who
24 live with him.

25 And any health issues that his mother has

1 or that the middle son has, in the Court's view, can
2 be well taken care of by the other members of the
3 family. So I don't see that as any kind of problem
4 for imposing the jail time that the government is
5 requesting.

6 I certainly am considering that Mr. Patel
7 has no criminal record. I am considering that this
8 offense happened at a time when lots of people -- a
9 lot of people were not exercising good judgment
10 because of the bank and mortgage failures in this
11 country.

12 That is not an excuse, but it sets the
13 stage for why someone who apparently has not engaged
14 regularly in fraudulent transactions would engage in
15 this one. And the -- I was glad to have the
16 additional background on all of the lawsuits that have
17 been brought to the Court's attention.

18 As Mr. Samuel pointed out, Mr. Abely is
19 a -- he's what I call a compassionate prosecutor, as
20 Mr. Hardin was and as I think I was, which is what I
21 think is appropriate. I think that his good judgment
22 is reflected in the plea agreement. I think that
23 allowing Mr. Patel to plead to two counts and
24 dismissing eight shows his evaluation of the facts.
25 He knows the facts of all 10 of these offenses, and

1 the Court does not.

2 But he also, in his good judgment, is
3 requesting significant jail time. It's not
4 significant jail time in this court, believe me,
5 folks. 18 months is not significant jail time. It
6 certainly would be significant jail time to this
7 defendant and to the other people sitting in this
8 courtroom.

9 Again, my job must take into account not
10 just what a wonderful man Mr. Patel is to his family
11 and community and friends and associates, but the
12 offense itself. And my sentence must reflect the
13 seriousness of the offense, promote respect for the
14 law, not just by Mr. Patel, but for people in the
15 community who hear about this offense and what
16 happened to Mr. Patel as a result of this offense.
17 And be a just punishment and avoid unwarranted
18 sentencing disparities.

19 And so the Court feels that a prison term
20 not of lengthy duration must be imposed in this case.
21 And so my sentence is going to be six months in the
22 custody of the Bureau of Prisons followed by two years
23 of supervised release.

24 I also am levying a \$50,000 fine. He
25 must pay the \$200 special assessment. No restitution

1 is due.

2 The special conditions of his supervised
3 release are he is prohibited from owning, carrying or
4 possessing firearms, destructive devices or other
5 dangerous weapons. He's to cooperate in the
6 collection of DNA.

7 He shall pay the fine within 60 days of
8 sentencing. If it's not paid, the repayment will
9 begin under the Prison Inmate Financial Responsibility
10 program. And he's to furnish all financial records
11 and tax returns during his period of supervised
12 release.

13 Mr. Abely, do you have a strong
14 investment in Special Condition No. 4 or do you have
15 suggestions for modifying it or revising it in any
16 way?

17 MR. ABELY: Your Honor, I understand
18 Mr. Hardin's point. And certainly the intention of
19 any condition should not be to improperly handicap
20 Mr. Patel from earning a living, including --
21 including paying back other debts that he's due.

22 However, I agree with the probation
23 office's recommended condition here. The period of
24 supervised release is two years, which is not as long
25 as it is in some cases. And I think in this case it

1 would be appropriate to make sure that as Mr. Patel
2 reenters the business community, that other investors
3 are protected.

4 THE COURT: Well, he certainly has two
5 sons who could do all this for him, I guess.

6 MR. ABELY: I won't speak to that,
7 Your Honor.

8 THE COURT: Okay. I'm going to leave it
9 in place. If it turns out to be too much of a
10 hindrance, you can always file a motion to request a
11 modification of it once he's on supervised release.
12 And I will consider that.

13 MR. GARLAND: May I just briefly address?

14 THE COURT: Yeah.

15 MR. GARLAND: If you look at the
16 language, it is extremely broad.

17 THE COURT: It's the standard language, I
18 presume. Is it, Ms. Lander?

19 MR. GARLAND: I don't know about the
20 standard language, but if you read the language, it is
21 so broad as to make -- how -- how can he pay those
22 debts. How can he solve a problem if he has an asset
23 and he needs to bring people into it, sell part of it,
24 take that money, pay all the people that are owed. I
25 just -- what it does is it really hurts the creditors

1 that he has.

2 THE COURT: Why didn't you folks deal
3 with this before today?

4 MR. GARLAND: Your Honor, we take the
5 blame. We take the blame. So many issues and I think
6 we got lost looking at the lawsuits and didn't really
7 focus on that issue. When I tried to read the
8 language to try to understand, it's what I would call
9 its overbreadth or vagueness, I don't see how he can
10 carry on any kind of business activities.

11 THE COURT: Well, he's got -- he's got
12 investments that are in his name. Numerous,
13 apparently.

14 MR. GARLAND: If you look at this 15,000
15 or so dollars a month in mortgage payments, that
16 anticipates somebody -- in other words, we put a
17 condition on him that causes all kind of damage to
18 other people, and it really hamstrings.

19 Now, I would ask the Court in considering
20 that condition to think about the thousands or tens of
21 thousands of business transactions this man had to
22 have engaged in to assemble and put together 125
23 motels. Then to sell them, to build banks.

24 Each one of those might have involved 20,
25 40 transactions. One over a 90-day period in the

1 midst of crisis? I want to ask you to reconsider that
2 condition. If he does anything, his supervised
3 release can be revoked. And he could be prosecuted
4 for it.

5 But this type of condition is more suited
6 to a banker who is still in the banking business or
7 securities dealer or a special kind of situation. But
8 for a person who has a diversity -- and who's got --
9 he's going to have to go to his friends over the years
10 and say, help me be able to meet these problems.

11 And we have some consent judgments. I
12 don't know if they've all been assembled yet or the
13 status. He has not gone bankrupt, but if he can't do
14 anything, that provision, I think, puts him in
15 bankruptcy.

16 So if you look at it -- if you had tens
17 of thousands of transactions and not a finding, no
18 other criminal warrant, not a judgment predicated on
19 fraud, a claim --

20 THE COURT: I don't know about whether
21 there are any judgments predicated on fraud. That I
22 don't know. I see a lot of multimillion dollar
23 judgments that might or might not arise out of
24 lawsuits that alleged fraud.

25 MR. GARLAND: I can't fully answer that

1 because all of this kind of fluttered in here --

2 THE COURT: Does anybody have a

3 suggestion about how to make it less Draconian?

4 MR. HARDIN: Well, I have one,

5 Your Honor. It really worries me, it says "or
6 otherwise oversees any investment." I can foresee a
7 situation where his sons maybe are picking up the
8 mantle and going forward with it, but he could easily
9 be accused of overseeing it if he gives any advice.

10 It's just so broad.

11 THE COURT: Yeah.

12 MR. HARDIN: The most Draconian is
13 otherwise oversee, to me.

14 MR. ABELY: And, Your Honor, in light
15 of -- Mr. Hardin said, I think, overbreadth, I think
16 Mr. Garland said vagueness. I can see that in -- to
17 be candid, in the terms otherwise oversee, as well as
18 manage. I think perhaps if the Court were to consider
19 modifying this condition, to leave the operative verbs
20 as being solicit or accept.

21 I think that really would go to
22 protecting potential investors while hopefully not
23 hamstringing his ability to manage businesses that
24 he's already involved in.

25 MR. GARLAND: We can certainly live with

1 that proposed modification, Your Honor. We'd ask the
2 Court to --

3 THE COURT: You think you can?

4 MR. GARLAND: We think we can.

5 THE COURT: All right. So shall not
6 solicit or accept any investments, payments for
7 investments or capital funding --

8 MR. GARLAND: I don't think we can live
9 with the rest of that. If he's not out soliciting
10 investments and accepting investments, but if he has
11 payments coming in from prior investments, sells
12 something and the money comes back, we would just ask
13 you to limit it, shall not solicit or accept any
14 investments from -- let's see -- any individual or
15 business entities. I think that will do it. Am I
16 correct? I'm not a contract lawyer, so.

17 THE COURT: Defendant shall not solicit
18 or accept any investments from any individual or
19 business entities while on supervised release. Are
20 you saying you can live with that? Does Mr. Patel
21 think he can live with that?

22 MR. GARLAND: Yes, he can.

23 THE COURT: Okay. So that will be -- is
24 that acceptable?

25 MR. ABELY: It is, Your Honor. I'll just

1 toss this out there, that the probation officer has I
2 think -- an alternate would be to make any of this
3 type of activity contingent on notification of the
4 probation office, which would be another way to do it.

5 I personally think that narrowing this
6 such that it just applies to the solicitation or
7 acceptance of investments is sufficient to meet the
8 needs that I was --

9 THE COURT: I do too. I think it's way
10 too complicated to let the probation office know about
11 those things. So 4, as modified.

12 MR. GARLAND: Your Honor, we would like
13 to seek the recommendation of the Court that he be
14 confined in the Atlanta camp located in Atlanta.

15 THE COURT: Atlanta prison camp?

16 MR. GARLAND: Yes. It's located adjacent
17 to the Atlanta prison.

18 THE COURT: All right. I'll recommend
19 that. You know they do what they wish --

20 MR. GARLAND: I know they do.

21 THE COURT: -- but I will make the
22 recommendation. I presume he would like to
23 self-report in 60 days or so?

24 MR. GARLAND: We would also request that,
25 Your Honor.

1 THE COURT: 60 days? 60 days?

2 MR. GARLAND: 60 days would be adequate.

3 THE COURT: All right. Self-report by
4 Wednesday, May 18 at 2 o'clock to wherever you are
5 designated, Mr. Patel. And I have to tell you that
6 your failure to promptly report is another federal
7 offense.

8 Does anyone have objections to my
9 sentence that have not previously been raised?

10 MR. ABELY: Not the government,
11 Your Honor.

12 MR. SAMUEL: No, Your Honor.

13 THE COURT: Can the J&C reflect that you
14 do not object to my variance?

15 MR. ABELY: Yes, it may, Your Honor.
16 Thank you.

17 THE COURT: Mr. Patel, to the extent you
18 retained your right to appeal in your plea agreement,
19 any appeal must be filed within 14 days. You may
20 apply to appeal under the pauper's oath if that is
21 appropriate and the clerk will file your notice of
22 appeal if you request the clerk to do so.

23 You must comply with the conditions of
24 your release until you report to serve your sentence.
25 I want to thank all your family, friends and

1 associates for coming today and helping to give the
2 Court a view of you as a person. It was helpful. Is
3 there anything else on this case?

4 MR. ABELY: No. Thank you, Your Honor.

5 THE COURT: All right. We're in recess.
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REPORTER'S CERTIFICATE PAGE

3 I, Roxann Harkins, Official Court Reporter
4 for the United States District Court for the Middle
5 District of Tennessee, in Nashville, do hereby
6 certify:

7 That I reported on the stenographic machine
8 the proceedings held in open court on March 18, 2016,
9 in the matter of UNITED STATES OF AMERICA v. R.C.
10 PATEL, Case No. 3:14-cr-00082-1 ; that said
11 proceedings were reduced to typewritten form by me;
12 and that the foregoing transcript is a true and
13 accurate transcript of said proceedings.

This is the 11th day of April, 2016.

s/ Roxann Harkins
ROXANN HARKINS, RPR, CRR, LCR
Official Court Reporter